HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP No. 1083/2004 S/B

Smt. Kamna Kukreti

vs

District Inspector of

School, Pauri Garhwal

Approved for reporting

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~~Not approved for reporting~~

Date of decision 6.3.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO: 1083 OF 2002 (S/B)

Smt. Kamna Kukreti W/o Sri Upendra Kukreti, R/o M.N. Bahuguna Marg, Kotdwar, District Pauri Garhwal.

----Petitioner

Versus

1- District Inspector of Schools, Pauri Garhwal.
2- Regional Inspectres Girls School, Pauri Garhwal.
3- Committee of Management, Arya Kanya Inter College, Kotdwar, District Pauri Garhwal through its Manager..

-----Respondents

Sri V.B.S. Negi, Advo, learned counsel for petitioner.
Learned Standing Counsel for respondents.

Dated : March 6, 2006.
HON'BLE RAJESH TANDON, J.

Heard Sri V.B.S.Negi counsel for the petitioner and Standing Counsel for respondents.

By the present writ petition the petitioner has prayed for a writ of mandamus directing the respondents to regularize the service of the petitioner on the post of Assistant Teacher (science) L.T. Grade in Arya Kanya Inter College, district Pauri Garhwal with effect from 20.04.1998. The petitioner has also prayed for the payment of her regular salary for the post of Assistant teacher (science) with effect from 20.04.1998.

Briefly stated,in the year 1991 one post of Assistant teacher (science) L.T.Grade was vacant due to the retirement of one Assistant teacher L.T.Grade

then the committee of management published an advertisement dated 04.07.1991 in Daily Hindu News Paper, namely 'Jayant'. The petitioner as well as other candidates applied for the post of Assistant teacher (science) L.T.Grade and were called for interview on 14th July, 1991. However, the petitioner was selected by the committee of management and thereafter she was given appointment letter by the committee of management on 23rd July, 1991. A perusal of the order dated 23rd July, 1991 shows that since the approval of respondent no.2 has not been received, the appointment was made under section 18 of U.P. Secondary Education Service and Selection Board Act, 1982. The appointment letter issued in favour of the petitioner is quoted below:

"i=kd e[ek 91&92 fnukad 23&7&91

foi;% ,y0Vh0 foKku ¼,d½ dh fu;fDr dk lUnHkZ esA

vkidk lfpr fd;k tkrk gS fd vkidk in i=tkr fo?kky; dk i=kd 41@91&92 fnukad 15@7@91 }kjk e.Myh; ckfydk fo?kky; fujh{kdk dh lok esa foRrh; lgefr gsrq izLrqr fd;k x;k Fkk ijUrq vkidk vuqekunu vHkh izkIr ugh gqvk gS fo/kky; dh Nk=kvksa dh fgr dk nf[krs gq, lo|lfefr ls e.Myh; ckfydk fo/kky; fujh{kdk ls ,d lIrkg dh vUrxZr vuqekunu u feyus ij vkidk 24-7-91 ls ,y0Vh0 foKku ,d dh in ij /kkjk 18 dh fu;fDr dh lcy lqfr lo|lfefr ls fuf'pr dh tkrh gSA**

On 15.07.1991 the committee of management sent the entire papers of selection to the Regional District Inspectors of Girls Schools for necessary approval.

On 23.07.1991 again the committee of management sent a letter to the petitioner that since the approval of the respondent no. 2 has not been

received, the appointment of the petitioner under section 18 of U.P. Secondary Education Service and Selection Board Act 1982 has been approved by the Management.

A counter affidavit has been filed by the State Government. In para (ii) of the counter affidavit filed by the State it has been stated that in the year 1991 one Smt. Sindhu Negi was promoted for the post of Assistant teacher, L.T.Grade in the said college against the two posts created by the State government on 15.01.1990 and rest one post of Assistant teacher was liable to be filled up by the direct recruitment by the commission. The committee of Management should have notified the vacancies to the commission through R.I.G.S. but in the present case the committee of Management did not notify the vacancy to the commission through R.I.*G.S.* hence the proceeding initiated by the committee of Management of the said college regarding the appointment of assistant teacher, L.T.Grade against the said vacant post is wrong.

The petitioner has filed the Notification of vacancy on 27.01.1990. The same is quoted below:

^^i=kd 73@89&90 fnukd 27&1&1990

foi;% vfHk;kpu ii= iqi.k dj lEcU/k esA

egkn;k]

vkidh lsok esa vfHk;kpu iqi= inkUufr rFkk lh/kh Hkjrh dh i'pkr izfir fd;s tk jgs gSa dI;k ifr gLrk{kj djds vk;kx dk Hkqtku dk dIV djsA

lyXud& i/kkukpk;Z dh inkUufr dh vf/k;kpu iqi=

Jherh dey'k tk'kh ,oa fl/kq uxh dk inkUufr
dk vf/k;kpu dk i=
fjfDr;ksa dk vf/k;kpu i=

Hkonh;
gO vLiIV
icU/kd
vk;ksa dU;k bUVj dkyst
dkV}kj x<oky
lR;ifrfyfi

Section 18 of the U.P. Secondary Education (Services Selection Board) Act. 1982 provides the appointment of ad hoc teachers after the notification of the vacancy by the Management in accordance with sub section (1) of Section 10. Section 10 reads as under:

"10. Procedure of Selection by direct recruitment- (1) For the purpose of making appointment of a teacher, by direct recruitment, the management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of a post other than the post of Head of the Institution, also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Ktribes and other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Resedrvation for Scheduled Castes, Scheduled Tribes and other Backward Classes Act, 1994 and notify the vacancies TO THE board in such manner and through such officer or authority as may be prescribed.

(2)The procedure of selection of candidates for direct recruitment to the post of teachers shall be such as may be prescribed.

Provided that the Board shall, with a view to inviting talented persons, givens wide publicity in the State to the vacancies notified under sub section (1).”

A perusal of the notification of vacancy dated 27.01.1990 establishes the requirement as contained under section 10. The procedure for recruitment has been defined under section 18 of the U.P. Secondary Education (Services Selection Boards) Act,1982. The same is quoted below:

“18. Ad hoc Teachers.- (1) where the Management has notified a vacancy to the (Board) in accordance with sub-section (1) of Section 10 and the post of a teacher actually remained vacant for more than two months, the Management may appoint by direct recruitment or promotion a teacher on purely ad hoc basis, in the manner hereinafter provided in this section.

2-A teacher other than a Principal or Headmaster, who is to be appointed by direct recruitment may be appointed on recommendation of the Selection Committee referred to in sub-section (8).

3-A teacher other than a Principal or Headmaster, who is to be appointed by promotion, may in the prescribed manner be appointed by promoting the senior most teacher, possessing prescribed qualifications-

a- in the trained graduate's grade, as a lecturer, in the case of a vacancy in the lecturer's grade;

b- in the Certificate of Teaching grade, as teacher in the trained graduate's Grade, in the case of a vacancy in the Trained graduate's grade.

4-A vacancy in the post of a Principal may be filled by promoting the senior most teacher in the lecturer's grade.

5-A vacancy in the post of a Headmaster may be filled by promoting the senior most teacher in the trained graduate's grade.

6-For the purposes making appointments under sub-sections (2) and (3), the Management shall determine the number of vacancies, as also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes of citizen in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 an, as soon as may be thereafter, intimate the vacancies to be filled by direct recruitment to the District Inspector of Schools and if the Management fails to intimate the vacancies and the post of a teacher has actually remained vacant for more than three months, the District Inspector of Schools may, subject to such directions as may be issued by the Director and after

verification from such institution or from his own record, determine such vacancies himself.

7-The District Inspector of Schools shall, on receipt of intimation of vacancies or as the case may be, after determining the vacancies under sub-section (6), forward the same to the Deputy Director of Education incharge of the Region, who shall invite applications from the persons possessing qualifications prescribed under the intermediate education Act, 1921 or the regulations made thereunder, for ad hoc appointment to the post of teachers other than Principal or Head Master in such manner as may be prescribed.

8-(a) For each region there shall be a Selection Committee for selection of candidates for ad hoc appointment by direct recruitment comprising-

(i) Regional Joint Director of Education.

(ii) Regional Deputy Director of Education (Secondary)

(iii) Regional Assistant Director of Education (Basic)

The Regional Joint Director of Education shall be the Chairman."

(b) The Selection Committee constituted under clause (a) shall make selection of the candidates, prepare a list of the selected candidates, allocate them to the Institutions and recommend their names to the management for appointment under sub-section(2).

(c) The criteria and procedure for selection of candidates and the manner of preparation of

list of selected candidates and their allocation to the Institution shall be such as may be prescribed.

9- Every appointment of an ad hoc teacher under Sub-section (1) shall cease to have effect from the date when the candidate recommended by the (Board) joins the post.

10- The provisions of Section 21-D shall mutates mutandis apply to the teachers who are to be appointed under the provisions of this section."

Admittedly in the present case the vacancy was notified on 27.01.1990 and the appointment was made on 23.07.1991 and, as such, the petitioner has claimed that she is entitled for the appointment in accordance with the Regulation as contained under section 33-C of the Act.

The petitioner has also referred the judgment reported in **(2000) 1 UPLBEC 895 Sohan Singh and another Vs The District Dinspector of Schools, Pauri Garhwal and others** where it has been directed for consideration of the Regularization in accordance with section 33-C of the U.P. Secondary Education Services Commission (Amendment) Act, 1998. The observations are quoted below:

"Mr. Padia has invited the attention of this Court to the U.P. Secondary Education Service Commission (Amended) Act 1998 (U.P. Act No. 25 of 1998) Section 10 of the said Act inserted Section 33-C and 33-D in the Principal Act. Section 33-C which is relevant for the

purposes of deciding the present controversy is reproduced below.

33-C Regulation of certain more appointments*- (1) Any teacher who;*

(a) (i) who was appointed by promotion or by direct recruitment on or after May 14, 1991 but not later than August 16,1993 on ad hoc basis against substantive vacancy in accordance with Section 18, in the Lecturer grade or Trained Graduate grade;

(ii) was appointed by promotion on or after July31,1988 but not later than August 6,1993 on ad hoc Basis against a substantive vacancy in the post of a Principal or Headmaster in accordance with section 18;

(b) possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of the Intermediate Education Act, 1921;

(c) has been continuously serving the institution from the date of such a appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Commision (Amendment) Act, 1998;

(d) has been found suitable for appointment in a substantive capacity by a Selection committee consulted under sub section (2);

shall be given substantive appointment by the Management"

Mr. Padia submitted that in view of the amendment made by U.P. Act No. 25 of 1998, the

case of the petitioners are to be considered by the Selection Committee as constituted under Section 33-C(2)(a) of the Act.

In view of the amendment brought in the Principal Act by U.P.Act No.25 of 1998,a case has been made out by the petitioners to be considered by the Selection Committee constituted under Section 33-C (2)(a) of the Principal Act and if the petitioners fulfill the criteria laid down in the said Section 33-C and also possess the requisite qualification, his case be considered within a period of 3 months from the date of filing of the certified copy of this order before the District Inspector of Schools, Pauri Garhwal, respondent No. 1."

While filing the writ petition this Court on 28.08.2002 passed the order that necessary orders may be passed concerning the regularization of the petitioner. The grievance of the petitioner is that the petitioner has not been given opportunity of hearing before depriving the petitioner from his regularization as well as the payment of her salary. However, the petitioner is getting the salary.

The matter is, therefore, sent back to the respondent no.2 and the respondent no.2 who shall pass the appropriate order on the representation made by the petitioner which has been submitted from time to time. On the representation of the petitioner the respondents shall pass suitable order with regard to the regularization of the petitioner within a period

of three months from filing of certified copy of the order.

With the above observations, the writ petition is allowed.

(Rajesh Tandon, J)

06.03.2006.
Negi.